

docketed May 29, 2018, Defendant states that he did not receive Plaintiff's Notice until he visited his probation officer on May 7, 2018, and that his request for a hearing was mailed within the 20-day limit for responding. (Doc. No. 59).

A writ of possession cannot be issued unless notice from the court has been served on debtor advising him of his rights. N.C.G.S. § 1C-1603(a)(4). The judgment creditor must cause the notice, which must be accompanied by the form for the statement by the debtor, to be served on the debtor pursuant to N.C.G.S. § 1A-1, Rule 4(j)(1). If the debtor cannot be served that way, the creditor may serve him by mailing a copy to his last known address. Proof of service by certified or registered mail is as provided in N.C.G.S. § 1A-1, Rule 4. The creditor may prove service by mailing to the last known address by filing a certificate that the notice was served indicating the circumstances warranting the use of such service and the date and address of service. If the judgment debtor moves to designate his exemptions, a copy of the motion and schedule must be served on the judgment creditor as provided in N.C.G.S. § 1A-1, Rule 5. See N.C.G.S. § 1C-1603(d). However, if the judgment debtor requests a hearing before the clerk to claim exemptions, "the clerk **must** set a hearing date and give notice of the hearing to the judgment debtor and judgment creditor." N.C.G.S. § 1C-1603(e)(4) (emphasis added).

Defendant claims that he did not receive the Notice and debtor's form until May 7. Plaintiff does not contest that assertion. When three days are added for mailing, Defendant's May 29 Letter requesting a hearing was timely filed within the 20-day limit. See N.C.G.S. § 1A-1, Rule 6(e) (adding three days for mailing). Even though Plaintiff did not provide sufficient evidence of service, Defendant has now requested a hearing on exemptions and the Court is required to set such a hearing. See N.C.G.S. § 1C-1603(e)(4).

Based on the foregoing, Plaintiff's Motion for Final Execution and Order to Preclude

Exempt Property Rights will be denied and Defendant's Motion for Hearing on Exemptions will be granted. A hearing before a designee of the Clerk of Court will be set in a separate Order.

IT IS THEREFORE ORDERED that

- (1) Plaintiff's Motion for Final Execution and Order to Preclude Exempt Property Rights, (Doc. No. 57), is **DENIED**.
- (2) Defendant's Motion for Hearing on Exemptions, (Doc. No. 59), is **GRANTED**.

Signed: June 25, 2018

A handwritten signature in black ink, appearing to read "Frank D. Whitney", is written over a horizontal line.

Frank D. Whitney
Chief United States District Judge

